IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 176 OF 2000

1. Vipul C.Dalal.
2. Anis C.Dalal.
3. Govind M.Halpati,
4. Balchandra K.Patel,
5. Bipin K.Patel,
6. Chandrakant S.Tandel,
7. Kishore Fakir Jalat. ... Appellants
(Org.Accused Nos. 1,2,3,11,12,13,& 14 respectively.)

Versus.

1. State of Maharashtra
(State, P.S.D. Danman.)
2. Union of India. ... Respondents.

Shri Adik Shirodkar, Senior Counsel with Shri V.S.Kapse for the Appellants Nos.1, 2, 4 to 7.

Shri A.P.Mundargi for Appellant No.3.

Shri H.V.Mehta for the Respondent No.2.

CORAM ; SMT.RANJANA DESAI, &
ABHAY S. OKA, JJ.

Date on which the
Judgment is reserved. : 21st October, 2004.

Date on which the
Judgment is pronounced: 27th October, 2004.

ORAL JUDGMENT (Per Abhay S.Oka, J.).

1. By this appeal, the Appellants who are Accused Nos.1 to 3 and 11 to 14 have taken exception to the judgment and order dated 7th March 2000 passed by the learned In-charge Sessions Judge, Daman, in Sessions Case No.1 of 1995. By the impugned judgment and order, the Appellants have been convicted of offence punishable under section 147 of the Indian Penal Code as well as an offence punishable under section 302 read with section 149 of the Indian Penal Code (hereinafer referred to as "IPC"). By the said Judgment and Order, the Appellants are acquitted of the offence punishable under sections 148, 364, 427 and 323 read with section 149 of the IPC. Accused Nos.4 to 10 were acquitted of all the offences alleged against them. Accused Nos.1 to 3 and 11 to 14 were sentenced to suffer R.I. for two years and to pay fine of Rs.500/- and in default suffer R.I. for three months for offence punishable under section 147 of the IPC. The said accused were sentenced to suffer life imprisonment and to pay fine of Rs.2000/- and in default to undergo R.I. for six months for offence punishable under section 302 read with section 149 of the IPC. The learned Sessions Judge directed that substantive sentence awarded to the Appellants shall run

concurrently.

2. The prosecution case is that on or about 24th February 1993 at about 8.30 p.m. at Nani Daman, the Accused formed an unlawful assembly and in prosecution of common object of the said assembly, namely to kidnap and murder one Shri A.D.Kurade committed offence of rioting punishable under section 147 of the IPC. The allegation against the Accused was that at the same time and place they were armed with deadly weapons such as hockey sticks, wooden sticks and thereby committed offence under section 148 of the IPC. The allegation against the Accused is that in prosecution of the common object of the said unlawful assembly, they kidnapped the said Shri A.D.Kurade with the intention of committing his murder and thereby committed offence punishable under section 364 of the Code. Further allegation against the Accused is that they were guilty of committing murder of said Shri A.D.Kurade and thereby committed offence punishable under section 302 read with section 149 of the IPC. Allegation was also made against the Accused of voluntarily causing hurt to one Eapen George and thereby committing an offence punishable under section 323 read with section 149 of the IPC.

3. The prosecution examined total 18 witnesses including the Doctor who performed post-mortem on the body of the deceased and the Investigating officer. Out of the remaining 16 witnesses, 14 witnesses turned hostile and only two prosecution witnesses i.e. P.W.15 Franciso Rocha Mario Rocha and P.W.17 Veerabhai Ramabhai Jethwa supported the prosecution.

4. The case of the prosecution appears to be that on 24.2.1998 at about 8.30 p.m. a mob of about 600 persons gathered near Hotel Sovereign at Daman. The mob was shouting "Chor Chor" in front of the hotel. The mob asstembled there as it was suspected that the deceased A.D.Kurade who was inside the Hotel was a thief. After getting information about the mob, P.W.15 Francisco (Police Sub-Inspector) and P.W.17 Jethwa (Inspector of Police) along with police personnel reached the Hotel Sovereign. When they entered the hotel they found one person (the deceased) sitting near the counter of the hotel and Accused No.9 Mr.Chandrakant Dalal, and his three sons, viz. Accused Nos.1, 2 and 10 and two more persons were interrogating the said person. The case of the prosecution is that Accused Nos.1 and 2 assaulted the said person with fist blows. Accused Nos.1 and 10 were having hockey sticks in their hands. The further

case of the prosecution is that P.W.17 Shri Jethwa informed the crowd gathered outside the hotel Sovereign that the person present in the Hotel Shri Kurade was an Engineer working in Military Engineering Services and he was not a thief. Seeing the ferocity of the mob P.W.17 Jethwa called for more police force. Within five minutes Police force arrived. The crowd started pelting stones on the hotel building. Thereafter Accused No.3 Govind caught hold of the deceased and dragged the deceased upto Western gate of the hotel and at that time the crowd caught hold of the deceased and took him to the road. The case of the prosecution is that the three sons of Accused No.9 Dalal viz. Accused Nos.1, 2 and 10, and Accused No.11 started assaulting the deceased. The crowd also thrashed the deceased and assaulted him with kicks. The crowd started jumping on his body. By the time the Police rescued the deceased, he was unconscious. When he was taken to the hospital, he succumbed to injuries.

5. We have heard Shri Shirodkar learned Senior Counsel appearing for the Appellants Nos.1, 2 and 4 to 7 and Shri Mundargi, learned Counsel appearing for Appellant no.3 at length. We have also heard Shri Mehta appearing for the Respondent No.2.

6. The learned Counsel appearing for the Appellants submitted that P.W.15 and P.W.17 were Police Officers who claim to be eye witnesses to the incident. Both P.W.15 and 17 did not record any F.I.R. and the F.I.R. was recorded on the same day by one Verghese Thomas who stated that the assault was by unknown persons. The learned Counsel submitted that if P.W.15 and P.W.17 were eye witnesses, as responsible Police Officers it was their responsibility to register the F.I.R. immediately. It was submitted that P.W.17 has admittedly not entered in the station diary the names of the accused. The learned Counsel further submitted that there was inordinate delay in recording the statement of P.W.15 and P.W.17 and their statements were recorded only on 28.2.1993 though both of them were admittedly on duty in the same Police Station which was investigating the crime. The learned Counsel also pointed out that as an officer of the army was the victim, an independent enquiry was instituted by the Sub-Divisional Magistrate. Both P.W.15 and P.W.17 admitted in their evidence that on 3rd March 1993 their statements were recorded by the Sub-Divisional Magistrate and in their statements both of them did not specifically name the accused. Therefore, it was submitted that the alleged statement of the said witnesses recorded on 28th February 1993

were ante-dated. The learned Counsel also brought to our notice that though the Accused were named by P.W.15 and P.W.17 only on 28th February 1993, it is very surprising that some of the Accused were arrested on 27th February 1993 itself. It was also argued that the identification parade was not held. It was submitted that there was no possibility of the P.W.15 and P.W.17 knowing the accused persons and therefore, failure to hold identification parade was fatal to the prosecution. It was submitted that even P.W.1 Dr.Charudatta Jog admitted that all injuries appearing on the person of the deceased were possible during the course of stampede. The learned Counsel further pointed out that atleast five Police Officers who were examined as witnesses have turned hostile. It was lastly submitted that it was a case of no evidence against the accused and in any event, the guilt of the accused was not established beyond reasonable doubt by the prosecution.

7. Shri Mehta, the learned counsel appearing for the Respondent submitted that though most of the prosecution witnesses were declared hostile, part of their evidence can be relied upon by the prosecution which established that a mob assembled outside the hotel Sovereign and the deceased was assaulted by the mob. He relied upon the findings recorded by the learned Sessions Judge. He

submitted that the evidence of P.W.15 and P.W.17 was found to be trustworthy by the learned Sessions Judge and therefore, there was no reason to disbelieve their version. He submitted that the offence had taken place at a public place and Accused No.3 was the local Municipal Councillor and Accused No.9 was the Tahsildar. He pointed out that Accused Nos.1, 2 and 10 were the sons of Accused No.9. He submitted that Daman being a small place P.W.15 and P.W.17 being Police Officers personally knew all the accused and identified the Accused in the Court. He, therefore, submitted that failure to hold identification parade was not fatal to the prosecution case. He submitted that the Appellants cannot rely upon minor discrepancies and contradictions in the evidence of P.W.15 and P.W.17. He submitted that no interference was required with the impugned Judgment and Order.

8. It will be necessary to refer to the evidence of P.W.15. He stated in his evidence that at about 8.55 p.m. on 24th February 1993 when he was at the Police Station a telephonic message was received from Sovereign Hotel that some quarrel was going on and the Police force was called for. He stated that the Police Inspector Shri Jethwa (P.W.17) asked him to accompany him to Sovereign Hotel. He stated that when he reached

the Hotel he saw a crowd of about 600 people gathered near the hotel and the persons in the crowd near the hotel were shouting "chor chor". He along with P.I. Jethwa went inside the hotel. He saw a person sitting near the counter of the hotel and at that time Mr.Dalal (Accused No.9) his three sons, and two more persons were interrogating the person sitting there. He identified the Accused No.9 and his three sons, viz. Vipul (Accused No.1), Nimesh (Accused No.10), and Anis (Accused No.2) who were sitting in the Court. He stated that the Accused Nos.1, 2 and 10 assaulted the said person with fist blows and he saw blood coming out from the mouth of that person. He stated that Accused No.1 and Accused No.10 were having hockey sticks in their hands. He stated that Shri jethwa (P.W.17) informed the crowd that the person sitting inside was an Engineer working in Military Engineering Services. Shri Jethwa telephoned the Police Station and called for more force. Within five minutes more Constable arrived and all of them were trying to control the crowd. The crowd was continuously raising slogan "chor chor maro maro". The crowd also started pelting stones on the Hotel Building. P.W.15 further stated that thereafter Accused No.3/Appellant No.3 Govind entered the Hotel. At the time some boys also entered the hotel from the window. He stated that accused Govind caught hold of the person

who was Shri Kurade and turned him. At that time the boys also caught hold of Shri Kurade and took him towards western side gate and from there to the road. At that time the crowd started assaulting the said Kurade and started kicking him and jumping on his body. The Police had difficulty in reaching him to rescue him. By the time the Police could rescue him, he was unconscious. The said Shri Kurade was taken to Marwad Hospital. P.W.15 stated that he had seen Accused Nos.1, 2, 10, and 11 in the crowd.

9. In the cross-examination P.W.15 admitted that he could not arrest any one from the crowd. He stated that he could not protect Shri Kurade from being handed over to the crowd. He admitted in cross-examination that there were 9 to 10 Police personnel inside the hotel and near the gate. He stated that he saw Shri Kurade for the first time when he was sitting near the counter. At that time he noticed that Shri Kurade had bleeding injuries near the mouth.

10. He admitted that the Sub-Divisional Magistrate recorded his statement on 3rd March 1993. He admitted that he had not state before the Sub-Divisional Magistrate that sons of Accused No.9 Dalal were beating the said person. He also admitted that he did not tell

the Sub-Divisional Magistrate that sons of Accused No.9 Dalal had hockey sticks with them. P.W.15 admitted that he was on duty from 24th February 1993 to 28th February 1993. He stated that as P.W.15 Jethwa was his superior officer, he did not lodge any complaint. He stated that he was present when P.W.17 Jethwa recorded the complaint of Shri Verghese Thomas. He stated that he did not find it necessary to tell the names of Accused when P.W.17 recorded the complaint. He stated that he had not seized the hockey sticks allegedly in possession of the Accused. He stated that Shri Kurade was beaten by the crowd for a period of about 10 minutes.

11. He admitted of having stated before the Sub-Divisional Magistrate that he had seen Appellant No.3 Govind holding the said injured and in a quick speed taking the injured towards western side gate of the hotel and in the meanwhile other members caught and took the injured from his hand and dragged him to the road and started assaulting him.

12. P.W.17 also stated that at about 8.55 p.m. on the date of incident a telephone message was received at the Police Station regarding the trouble which had erupted near Sovereign Hotel. The version of P.W.17 in his examination-in-chief is different from the version of

P.W.15. He stated that when he reached Sovereign hotel one injured person was seen sitting near the counter of the hotel. He saw accused No.9 along with his two sons and staff members of the hotel making enquiries with the said injured person. He also stated that he also made enquiries with the injured person and learnt that the person was working in Military Engineering Service at Airport Daman. He stated that as the mob was very violent he called for additional personnel. Additional force arrived at the scene within ten minutes. He stated that after making enquiry with Shri Kurade he told the crowd that the said person was not a thief. According to him the crowd insisted that he should verify whether he was a thief or not. Therefore, he along with the Accused No.9 one Ramji Tandel and sons of Accused No.9 went to room No.105 in the same hotel. In the said room they met one Eepan George and one Jayram Pandit. Both of them confirmed that the said Kurade was working with them in the Military Engineering Service. he thereafter informed the crowd that Shri Kurade was an Engineer working with M.E.S and was not a thief. However, the mob became violent and started pelting stones.

13. P.W.17 further deposed that Appellant No.3 Govind entered the hotel and dragged the said Shri Kurade

towards western gate of the hotel. At that time some people entered the hotel through windows and gate and took possession of Kurade and they took the said Kurade on the road in front of the hotel. He stated that Accused No.11, 12 and 14 and certain other persons started assaulting Shri Kurade with fist blows. P.W.17 identified Accused Nos.11, 12, 13 and 14. However, he identified Accused No.7 Thakur as Naresh, Accused No.6 Ishwar as Bhagat and Accused No.8 Suresh as Chottu. P.W.17 further stated that Accused No.1 assaulted the deceased with stick and Accused No.2 assaulted the deceased with a hockey stick. He stated that one Thomas who was staying in that hotel along with Shri Kurade lodged F.I.R.. He stated that on 27th February he arrested Accused No.1 to 3.

14. In the cross-examination he admitted that at the time of incident he was concerned with saving the life of Shri Kurade and therefore, he did not arrest the accused. He stated that Shri Kurade was protected by himself and his staff members when Kurade was sitting inside the hotel. He stated that distance between the counter of the hotel and both the gates was about 10 feet and the Police personnel were posted at the gates. He stated that Shri Kurade was brought to the hotel in a jeep. The jeep had come from the side of the Police

Station and Fatima Hotel. P.W.17 stated that he was not aware whether the crowd of about 200 persons had assaulted Shri Kurade near Fatima Hotel and thereafter he was brought to the hotel. He stated that he recorded the complaint of Shri Thomas. He stated that the other person in the Hotel Shri Eepan George had some injuries. He stated that the said Eepan George was assaulted after Kurade was assaulted. He admitted that in the enquiry conducted by the Sub-Divisional Magistrate his statement was recorded and in the statement he did not disclose that Accused No.1 had assaulted Kurade by stick and Accused No.2 had assaulted Kurade by a hockey stick. He admitted that he had not stated the names of any of the sons of Dalal (Accused No.9) and that he had not stated that Dalal's sons or any other person had any weapon in their hands.

15. He admitted Shri Kurade was taken out on the road from western gate where two Police personal were posted. He stated that the Accused No.9 Shri Dalal was pacifying the crowd. He admitted that he had not stated the names of any of the accused to the Sub-Divisional Magistrate. He started that he disclosed the names of the Accused for the first time on 28th February 1993 when his statement was recorded by Shri Solanki, the newly appointed Investigating Officer. He stated that he has

maintained a case diary. He stated that it is not mentioned in the case diary that he could not record the statement of the staff members because he was busy. He stated that when he enquired with Shri Kurade while he was sitting near the counter of the Hotel as to how he has received injuries, the said Kurade replied that he was assaulted by some persons. He admitted that he took about 10 minutes time to make enquiries with various persons about Shri Kurade in the hotel and thereafter he tried to control the mob. He stated that during that time he did not see Appellant No.3 i.e. Accused No.3. He lastly stated that he was not a native of Daman and since he was not knowing the entire story he did not become complainant himself.

16. At this stage it will be necessary to refer to the evidence of Dr.Charudatta Jog, P.W.1. Dr.Jog was Civil Surgeon working at the relevant time in Government Hospital at Marwad. He conducted postmortem on the body of the deceased Shri Kurade. In examination-in-chief he stated that cause of death was hypovolumic shock due to multiple injuries. He stated that the injuries on the person of Shri Kurade were possible by stick, fists and kick blows. In the cross-examination he admitted that the injuries mentioned in the postmortem report are possible during the course of stampede.

17. P.W.2 (Jagdish Prema Tangal), P.W.3 (Prakash Prema Tangal), P.W.4 (Hirabhai Morabhai Tangal), P.W.5 (Jayram Chotu), P.W.6 (Vijayan Krishna), P.W.7 (Narendra Tamboli), P.W.8 (Shamji jadav), P.W.9 (Gabrielle Pereira), P.W.10 (Nanalal Jadav), P.W.11 (Natwarlal Babyu Patel), P.W.12 (Agnelo Jesus), P.W.13 (Ahmedali Hasan Mithani), P.W.14 (SDaukat Anwar Mithani), and P.W.16 (Premji Bawa Jethwa) have been declared hostile as they have not supported the prosecution. It is to be noted here that P.W.7, P.W.8, P.W.9, P.W.10, and P.W.11 are Police personnel who accompanied P.W.15 and P.W.17 to the hotel Sovereign. They have not supported the prosecution. P.W.12 is a Homeguard who accompanied P.W.17 Jethwa to Sovereign Hotel. He has also been declared hostile. P.W.18 is Mahendrasingh Solanki who was appointed as the Investigting Officer on 27th February 1993. He recorded statement of all the witnesses.

18. We have carefully considered the evidence of the aforesaid witnesses. P.W.15 is a Police Sub-Inspector attached to the Daman Police Station. P.W.17 is a Police Inspector attached to the same Police Station. P.W.17 was in fact the officer in-charge of the Daman Police Station. Both the same responsible Police

Officers claim to be eye witnesses to the incident. They have disclosed the names of Accused Nos.1 to 3, Accused No.9 to 14 in the evidence. Both of them were on duty from 24th February 1993 to 28th February 1993 in the same Police Station which was investigating the crime. If P.W.15 and P.W.17 being responsible Police Officers had allegedly seen the commission of offence under section 302 of the IPC, it was their duty to register the F.I.R. However, P.W.17 chose to record F.I.R of one Shri Thomas on the same night who was obviously not a witness to the incident. In the said F.I.R. it is stated that some unknown persons assaulted the deceased Kurade. Till 28th February 1993 when their statements were recorded by P.W.18 Shri Solanki both of them did not disclose to any one the involvement of the accused. This behaviour on the part of P.W.15 and 17 who were Police officers appears to be very strange.

19. Exh.115 is the order dated 26th February 1993 passed by the Collector-cum-District Magistrate of Daman by which he appointed the Sub-Divisional Magistrate to enquire into the circumstances leading to the death of Shri Kurade and injury to Shri George and others during the incident. The said order records that the Enquiry Officer will also go into the adequacy of the action taken by the local Police and other connected aspects of

the incident. Both P.W.15 and 17 admitted that their statements were recorded by the Sub-Divisional Magistrate on 3rd March 1993. Both of them admitted that they did not disclose the names of the accused in their respective statements. The omission to state the names of accused on 3rd March 1993 is very significant. Because of this omission, the learned Counsel appearing for the Appellants have contended that the statement of both the witnesses allegedly recorded on 28th February 1993 appear to be ante-dated.

20. We find that there are major contradictions and omissions in the deposition of both P.W.15 and 17. P.W.15 stated in his examination-in-chief that when he reached the premises of Hotel Sovereign, Accused No.9 and his three sons as well as two other persons were interrogating one person i.e. Shri Kurade. He stated that the Accused Nos.1, 2 and 10 assaulted the said person with fist blows. He stated that Accused No.1 and Accused No.10 had hockey sticks in their hands. In cross-examination he admitted that when he saw Shri Kurade sitting near the counter of the hotel, there was bleeding injury on his face near the mouth. He admitted that he did not state before the sub-Divisional Magistrate that sons of Accused No.9 Dalal were beating Shri Kurade in the hotel. P.W.17 gave a different

version. He claims to have made enquiry with Shri Kurade and his colleagues staying in the same hotel and he claims that he informed the crowd that Shri Kurade was not a thief. He stated that Shri Kurade was already injured. P.W.17 stated that he along with Accused No.9 and his son went to room No.105 for making enquiry with the persons staying with Shri Kurade. He did not state that inside hotel premises the sons of Accused No.9 i.e. Accused Nos.1, 2 and 10 assaulted the deceased Kurade. He also did not state that the Accused No.1 and 2 were carrying any sticks or hockey sticks with them inside the Hotel premises. He stated that after Shri Kurade was taken over by the mob, Vipul i.e. Appellant No.1 assaulted the deceased by stick and Accused No.2 assaulted deceased by hockey stick. It is pertinent to note here that such allegation has not been made by the P.W.15. The P.W.17 admitted in the cross-examination that he disclosed the name of the accused for the first time only on 28th February 1993. However, he claims to have arrested Accused Nos.1 to 3 on 27th February 1993. In the cross-examination he has come out with altogether new story that the deceased Kurade was brought in a jeep from the side of Police Station and Fatima Hotel. When suggestion was given to him that there was crowd of 200 persons assembled near the Fatima Hotel and the said crowd assaulted Shri Kurade, P.W.17 did not deny the

correctness of the suggestion but stated that he was not aware whether such incident had happened. He admitted that before the Sub-Divisional Magistrate he did not state in his statement that the deceased was assaulted by Accused No.1 by stick and that the accused No.2 assaulted the deceased with a hockey stick. He also admitted that when he entered the hotel Sovereign he saw that Shri Kurade was already injured.

21. The story of both the witnesses on the role of Accused Nos.1 and 2 appears to be inconsistent. P.W.17 has not stated that the Accused Nos.1 and 2 assaulted the deceased inside the Hotel. On the contrary he stated that the deceased Kurade was already injured when he was sitting near the counter. He stated that father of accused Nos.1 and 2 i.e. Accused No.9 was trying to pacify the crowd. He stated that Accused No.9 and Accused Nos.1, 2 and 10 accompanied him to room No.105 to make enquiries about Shri Kurade. About use of stick and hockey sticks by Accused Nos.1 and 2 respectively, there are glaring omissions on the part of both the witnesses as they have not disclosed the said fact to the Sub-Divisional Magistrate who recorded their statement on 3rd March 1993.

22. There is one more surprising aspect of the matter.

Both P.W.15 and P.W.17 were present when F.I.R. of Verghese Thomas was recorded. When both of them claim to have seen the incident they did not think it fit to record their own F.I.R. The Accused Nos.1 to 3 were arrested on 27th February 1993. P.W.18 Shri Solanki, the investigating Officer stated that he took over the investigation on 27th February 1993 and that he was not aware on what basis accused Nos.1 to 3 were arrested on 27th February 1993. Thus the evidence of P.W.15 and P.W.17 as against Accused Nos.1 and 2 is not free from a reasonable doubt.

23. So far as the role of Accused No.3 is concerned, again the versions of P.W.15 and P.W.17 are contradictory. P.W.15 stated that Appellant No.3/Accused No.3 suddenly entered hotel Sovereign and caught hold of Shri Kurade and turned him. According to P.W.15 at that time some boys entered the hotel from the windows and the said boys caught hold of Shri Kurade and took Shri Kurade towards western gate and from there to the road. He admitted that he has not stated in his Police statement that after Accused No.3-Govind had caught hold of Shri Kurade the boys who had entered the hotel also caught hold of Shri Kurade.

24. P.W.17 stated that Accused No.3 dragged Shri Kurade

towards western gate of the hotel when some people who had entered the hotel through the window took possession of Kurade. P.W.17 admitted that the Police personnel were posted at the gate and the gate was at a distance of 10 feet from the counter of the hotel. In the cross-examination he stated that when he was making enquiries with Shri Kurade and other persons in the hotel he did not see accused No.3. Thus there are material contradictions about the role played by Accused No.3. If P.W.15 is to be believed all that he stated against Accused No.3 is that he caught hold of Shri Kurade in the hotel premises and turned him when the boys who entered the hotel premises through windows caught hold of Shri Kurade and took Shri Kurade to the road through the western gate. Therefore, P.W.15 ascribed only one role to Accused No.3 of catching Shri Kurade in the hotel premises and turning him. P.W.17 gave a different version by stating that Accused No.3 dragged Shri Kurade to western side gate. It is pertinent to note here that P.W.17 stated that inside the hotel premises Shri Kurade was guarded. It is, therefore, very difficult to believe that Accused No.3 alone caught hold of Shri Kurade and dragged him upto western gate.

25. In so far as the role of Accused Nos.11 to 14 i.e.

Appellants Nos.4 to 7 is concerned, P.W.5 has stated that he saw Accused No.11 when crowd was beating Shri Kurade. P.W.15 has not stated anything against any other Accused, except for P.W.9 and his sons Accused Nos.1, 2 and 10. So far as P.W.17 is concerned, he has stated that after the deceased was brought on the road P.W.11, 12 and 14 started assaulting the deceased with fist blows. The incident even according to P.W.17 has taken place on the road outside the Hotel Sovereign in the night after 8.30 pr 9.00 p.m. when P.W.17 was inside the hotel. It is doubtful whether the P.W.17 could spot the said accused on the road in a mob of more than 600 persons. More over P.W.17 identified Accused No.7 Thakur as Naresh, Accused No.6 Ishwar as Bhat and Accused No.8 Suresh as Chottu.

26. There is one more important aspect of the matter. Admittedly the identification parade was not held. Accused No.3 was a local Councillor and Accused No.9 was Tahsildar. Though P.W.15 and 17 have not specifically stated that they knew these accused before the incident, it is possible to say that both the witnesses knew the said two Accused. However, both the witnesses have not stated that they knew the sons of Accused No.9-Dalal and the other accused persons. It is true that the identification parade is not a substantive piece of

evidence. However, when the witnesses claim to identify the accused persons after lapse of about six years from the date of incident, the evidence of identification parade would have corroborated the evidence of the said witnesses. P.W.17 has also admitted that he was not the native of Daman. Therefore, it is very difficult to accept that all the accused were personally known to him. In the case of George v/s. State of Kerala, reported in (1998) 4 S.C.C.page 605, the Apex Court held that "It cannot be denied however that though not fatal, absence of the corroborative evidence of prior identification in an identification parade makes the substantive evidece of identification in Court after a long lapse of time a weak piece of evidence and no reliance can be placed upon it unless sufficiently and satisfactorily corroborated by other evidence". In the present case there is no corroboration. In our view the failure to hold identification parade is also a serious infirmity in the case of the prosecution.

27. There is hardly any evidence against the Appellant No.4 to 7. In so far as evidence of P.W.15 and P.W.17 against the Appellants Nos.1 to 3 is concerned, there are material discripanceis, contradictions and omissions which corrode the credibility of the prosecution case. The said discripancies affect the core of the

prosectuion case. Therefore, it is unsafe to rely on the evidence of P.W.15 and P.W.17. The Apex Court in a decision reported in (2003) 9 S.C.C. page 141 (Aslam Parvez v/s. Govt.of NCT of Delhi) held that where testimony of Police sitnesses is found unreliable, it was unsafe to place reliance on the same to convict the accused when public and independent witnesses did not support the prosecution on material particulars. In the present case not only socalled independent witnesses but even other five Police witnesses have not at all supported the prosecution. We are, therefore, of the opinion that it is impossible to come to the conclusion that the guilt of the accused has been proved beyond reasonable doubt. For the reasons which we have already stated the entire prosecution story appears to be unreliable.

28. It is necessary to refer to the findings recorded by the learned Sessions Judge. In so far as Accused No.3 is concerned, the learned Sessions Judge has held that the Accused No.3 caught Shri Kurade and dragged him towards the crowd. The said finding appears to be contrary to the evidence of P.W.15 who stated that the boys who entered the hotel premises through the windows took Shri Kurade towards the western gate. It is pertinent to note here that the learned Sessions Judge

recorded finding that there was no convincing proof as regards the allegation that Accused Nos.1 and 2 were holding sticks and hockey sticks. The specific allegation of P.W.17 against Accused Nos.1 and 2 is that Accused No.1 assaulted the deceased by a stick and the Accused No.2 assaulted the deceased by a hockey stick. P.W.17 has not deposed that inside the hotel premises any assault was made by Accused Nos.1 and 2. Therefore, when the learned Sessions Judge disbelieved the case of the prosecution that the Accused Nos.1 and 2 were carrying stick and hockey stick, nothing remains on record as against the said Accused. The learned Sessions Judge has observed that Accused No.3 dragged Shri Kurade to the road. However, even P.W.17 has stated that Accused No.3 took the deceased near the western gate and the crowd took the deceased to the road. The learned Sessions Judge accepted the case of the prosecution that the Accused Nos.11 to 14 assaulted the deceased on road. As stated earlier, there is hardly any evidence regarding the involvement of accused Nos.11 to 14. We are, therefore, of the view that the findings recorded by the learned Sessions Judge are contrary to the evidence on record.

29. We, therefore, hold that the prosecution has failed to prove the guilt of the Appellants/Accused beyond

reasonable doubt. We also hold that this is the only possible view which can be taken on the basis of the evidence on record. In any event, serious infirmities in the prosecution case make the guilt of the accused very doubtful.

30. Hence the appeal is allowed. The conviction and sentence against the Appellant is quashed and set aside. The impugned Judgment and Order is set aside. The Appellants Nos.1 to 3 who are in Jail shall be released forthwith unless required in connection with any other case. The bail bonds of rest of the Accused stand cancelled.

(Smt.Ranjana Desai, J.)

(Abhay S. Oka, J.)